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**Expert Sales and Service Corp. and International Brotherhood of Painters and Allied Trades of the United States and Canada, Drywall Tapers and Finishers Local 2006, AFL-CIO and United Brotherhood of Carpenters and Joiners of America, Carpenters District Council of Western Pennsylvania, AFL-CIO.** Cases 6-CA-27490 and 6-CA-27616

March 15, 1996

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

Upon charges filed on August 23 and October 6, 1995, the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and a notice of hearing on November 1, 1995, against Expert Sales and Service Corp., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the consolidated complaint, the Respondent failed to file an answer.

On January 22, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On January 23, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 21, 1995, notified the Respondent that unless an answer were received by the close of business on the third business day following receipt of the letter, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation with an office and place of business in Pittsburgh, Pennsylvania, has been engaged as a drywall, glass, and glazing contractor in the construction industry doing commercial, residential, and office construction. During the 12-month period ending July 31, 1995, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 within the Commonwealth of Pennsylvania for Dick Enterprises, Nello Construction, and Massaro Corporation, enterprises which are themselves directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that International Brotherhood of Painters and Allied Trades of the United States and Canada, Drywall Tapers and Finishers Local 2006, AFL-CIO (Drywall Finishers) and United Brotherhood of Carpenters and Joiners of America, Carpenters District Council of Western Pennsylvania, AFL-CIO (Carpenters) are labor organizations within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. The Drywall Unit

At all material times, the Drywall Finishers has been the limited exclusive collective-bargaining representative of certain of the Respondent's employees as described in the collective-bargaining agreement between those parties (the Drywall unit) and has been recognized as such representative by the Respondent. Such recognition is embodied in the collective-bargaining agreement between those parties which is effective by its terms for the period June 1, 1994, to May 31, 1998. The Drywall unit as set forth in the collective-bargaining agreement described above constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. About November 11, 1994, the Respondent entered into the aforesaid collective-bargaining agreement, whereby it recognized the Drywall Finishers as the exclusive collective-bargaining representative of the Drywall unit. Since about November 11, 1994, the Drywall Finishers has been recognized as the exclusive collective-bargaining representative of the Drywall unit by the Respondent without regard to whether the majority status of the Drywall Finishers had ever been established under the provisions of Section 9(a). For the period

from November 11, 1994, to May 31, 1998, based on Section 9(a) of the Act, the Drywall Finishers has been the limited exclusive collective-bargaining representative of the Drywall unit.

Since about March 1995, the Respondent has failed and refused to abide by any terms and conditions of its collective-bargaining agreement with the Drywall Finishers at the Respondent's Crawford Village, McKeesport, Pennsylvania jobsite. Although the terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining, the Respondent engaged in this conduct without the consent of the Drywall Finishers.

#### B. The Carpenters Unit

At all material times, the Carpenters has been the limited exclusive collective-bargaining representative of certain of the Respondent's employees as described in the collective-bargaining agreement between those parties (the Carpenters unit) and has been recognized as such representative by the Respondent. Such recognition is embodied in the collective-bargaining agreement between those parties which is effective by its terms for the period June 1, 1994, to May 31, 1998. The Carpenters unit, as set forth in the collective-bargaining agreement described above, constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. About July 6, 1995, the Respondent entered into the aforesaid collective-bargaining agreement, whereby it recognized the Carpenters as the exclusive collective-bargaining representative of the Carpenters unit. Since about July 6, 1995, pursuant to the aforesaid agreement, the Carpenters has been recognized as the exclusive collective-bargaining representative of the Carpenters unit by the Respondent, without regard to whether the majority status of the Carpenters had ever been established under the provisions of Section 9(a). For the period from July 6, 1995, to May 31, 1998, based on Section 9(a) of the Act, the Carpenters has been the limited exclusive collective-bargaining representative of the Carpenters unit.

Since about July 6, 1995, the Respondent has failed and refused to abide by any terms and conditions of its collective-bargaining agreement with the Carpenters at the Respondent's Crawford Village, McKeesport, Pennsylvania jobsite. Although the terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining, the Respondent engaged in this conduct without the consent of the Carpenters.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive

collective-bargaining representatives of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused to abide by any terms and conditions of the collective-bargaining agreements with the Drywall Finishers and the Carpenters since March and July 6, 1995, respectively, at the Respondent's Crawford Village, McKeesport, Pennsylvania jobsite, we shall order the Respondent to honor the terms and conditions of the collective-bargaining agreements and to make the Drywall and Carpenters unit employees whole for any loss of earnings, benefits, or expenses<sup>1</sup> they may have suffered as a result of the Respondent's unlawful actions. Backpay shall be computed in the manner described in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Expert Sales and Service Corp., Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Brotherhood of Painters and Allied Trades of the United States and Canada, Drywall Tapers and Finishers Local 2006, AFL-CIO and United Brotherhood of Carpenters and Joiners of America, Carpenters District Council of Western Pennsylvania, AFL-CIO, as the limited exclusive collective-bargaining representatives of its employees in the Drywall and Carpenters units by failing and refusing to abide by the terms and conditions contained in its collective-bargaining agreements with the Unions, effective June 1, 1994, through May 31, 1998.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms and conditions of the collective-bargaining agreements with the Unions, effective from June 1, 1994, through May 31, 1998.

<sup>1</sup> See *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981).

(b) Make the unit employees whole for any loss of earnings, benefits, or expenses they may have suffered as a result of the Respondent's failure and refusal to abide by the terms and conditions of the collective-bargaining agreements with the Unions since about March 1995 and about July 6, 1995, respectively, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 15, 1996

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William B. Gould IV, Chairman

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Margaret A. Browning, Member

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Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain collectively and in good faith with International Brotherhood of Painters and Allied Trades of the United States and Canada, Drywall Tapers and Finishers Local 2006, AFL-CIO and United Brotherhood of Carpenters and Joiners of America, Carpenters District Council of Western Pennsylvania, AFL-CIO, as the limited exclusive collective-bargaining representatives of our employees in the Drywall and Carpenters units by failing and refusing to abide by the terms and conditions of the collective-bargaining agreements with the Unions, effective June 1, 1994, through May 31, 1998.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms and conditions of these collective-bargaining agreements with the Unions, effective June 1, 1994, through May 31, 1998.

WE WILL make our unit employees whole for any loss of earnings, benefits, or expenses they may have suffered as a result of our failure to abide by the terms and conditions of the collective-bargaining agreements with the Unions since March 1995 and July 6, 1995, respectively.

EXPERT SALES AND SERVICE CORP.